App. F. IX-4

Previous References.

1941. (Cb-)

File No. 264-41

Serial Nos. 1-2

Later References.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. two only

Part B for Oct '41

SUBJECT.

Information regd by the Chamber of Princes re Extra-territorial rights of the Government of India with respect to European and American Subjects in Indian States and over Govt servants.

I am desired to forward herewith for favour of disposal the following circulars received from the office of His Highness the Chancellor of the Chamber of Princes.-

1. Circular No.64/VII-181 dated 5th July 1941 regarding the War Risk (Goods) Insurance Ordinance, 1940.
2. Circular No.66/VII-162, dated the 7th July 1941, re. the War and Internal Security.
3. Circular No.70, dated the 10th July 1941, re. Extra-territorial rights of the Government of India with respect to European and American subjects in Indian States and over Government servants.

- - -

Submitted.

(Intd.) B.T.K.
16.8.41.

DEWAN) ,, N. M.
17.8.41.
Fin. & Rev.Minister)
and
Law Minister.)

" The information asked for in Cir. 70 has to be supplied. Please draft. "

(Intd.) K. V. A.
29.8.41.

A printed Copy of the Note re. jurisdiction over Europeans in Civil and Criminal Cases is placed below for reference. Pages 1 to 5 of the note deal exhaustively with the Case of European British Subjects and pages 6 and 7 about Non-British Europeans and Americans

It is for orders as to whether the printed Copy may be sent to the Chamber of Princes

Information required by the Chamber of Princes re. the trial of European Br subjects

File No. 1346/6 of 194 | General and Revenue Secretariat

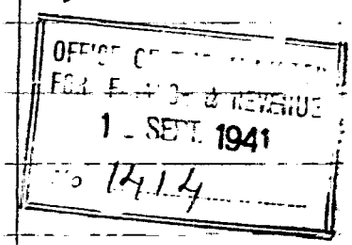
Answers to the questionnaire may be drafted after the

11/9

11/4.9

115/1529

2424



Hon CBR please see me

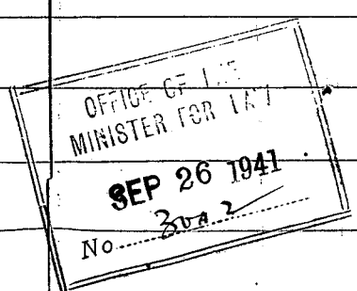
3/11/41

Submitted with a typed draft of a letter

CAR 1/9

The Draft may be approved

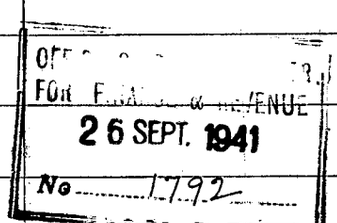
Law Secretary) 3/9/41



Minister for Law) Hm 2/9/41.

The answers are drafted so as to give information which is not Confidential and which is not Controversial. Opinions may be given by the Minister at the meeting. 3/9/41

Minister for Finance) Dewan 27.9.41 26-9-41



Office of H.H. the Chancellor, Chamber or Princes.
(Narendra Mandal).

U R G E N T.
CONFIDENTIAL.

Circular No:70.

Council House,
New-Delhi,
10th July, 1941.

Subject:-Extra-territorial rights by the Government of India with respect to European and American subjects in Indian States and over Government servants.

...

Your Highness,

As you are aware, varying arrangements have been made in differenct States with regard to the trials of Americans and Europeans (including British subjects). In view of the importance of this question to the States, it was referred to the Committee of Ministers with a view to examine it in the light of progress made by the States in their judiciaries since these arrangements were originally made, and the change in the times which necessitates avoidance of discrimination. The Committee of Ministers was invited to make proposals for an alternative arrangement consistent as far as possible with the dignity and sovereignty of the States and with any commitments which may have been made by the Government of India. A note on the subject prepared by the Secretariat, which was placed before the Committee of Ministers is appended (Appendix A)

2(i) A communication was received later from a State inviting opinion on a recent letter, addressed to the State concerned by its Political officer, which read as follows:-

> "I have the honour to draw the Darbar's attention to the provisions of Sections 4(3) of the Indian Penal Code, and to say that cases in which Government servants are charged with committing offences under the Indian Penal Code and other British Indian Laws containing similar provisions should be referred to this Agency for the orders of His Excellency the Crown Representative before they are tried in a State court"

(ii). The State concerned contended that the reference to Section 4(3) of the Indian Penal Code in the Political Agent's letter in question was not applicable in such cases as Section 4(2), Indian Penal Code read along with Section 188 Cr. P.C. covered only cases of such Government servants who remained were found, or were serving within the Jurisdiction of that very Indian State, It was further pointed out that under the practice hitherto followed in the State concerned, all employees of the Imperial Post Office, who were the only officers of the Government serving in State territories, had always been tried by the State Courts and copies of judgment forwarded to the Post Master General through the Political Agent. The State concerned, however, felt that the aforesaid communication, which appeared to have been addressed to other States also, might be invoked as a bar to such trials in future to preclude the States concerned from exercising their jurisdiction over trials of such Government servants serving in the States.

(iii). The general principles elucidated in the appended note (Appendix A) by the Secretariat, regarding extra-territorial rights over Europeans etc., would appear applicable, mutatis mutandis, to this question also. His Highness the Chancellor referred it for the opinion of the Committee of Ministers.

3. The Ministers' Committee discussed these questions at its meetings held last June in Bombay, and unanimously resolved -

(a) that a sub-Committee consisting of the following members be constituted to examine this question in all aspects and to prepare a statement of the case on behalf of the States for which the note prepared by the Secretariat may be taken as a basis of discussion:-

Rt. Hon'ble Sir Akbar Hydari.
Sir V.T. Krishnamachari.
Sir C.P. Ramaswamy Iyer.
Major K.M. Panikkar.

4. Your Highness will doubtless appreciate the desirability of a satisfactory solution of this question for which it is necessary that the sub-Committee referred to in last paragraph may be apprised of all information available in the various States concerning this matter. As such I shall be grateful if Your Highness will be so kind as to direct that the following information be supplied to Secretariat at the Council House, New-Delhi, as far as possible by the 15th August, 1941:-

APPENDIX A

Extra-territorial rights exercised by the Government of India with respect to European and Foreign subjects in Indian States.

(Note by the Secretariat)

The following facts are submitted for the consideration of the Committee of Ministers' order to assist them to appreciate the existing position in the matter :—

(*a*) In cases of crime the question of the applicability of the law of a State and the question of the jurisdiction of its courts are substantially identical, for the reason that the courts of one State will not aid in the enforcement of the criminal or penal law of another State. The criminal law and jurisdiction of a State are primarily territorial; or, in other words, that the application of its law and the exercise of jurisdiction on the part of its courts are primarily restricted to crimes committed within its territorial limits. By the common law of England all crime is local in its character, and both the application of the criminal law and the exercise of a criminal jurisdiction except in case of piracy, are confined to offences committed on land in England or in land-locked waters forming part of an English County. The doctrine, moreover, that criminal law and jurisdiction are territorial applies not only in England, but also in other parts of the British Dominions.

(Pitt Cobbett's cases on International Law—Vol. I. 5th edition).

(*b*) The Indian States may be classified into four categories according to measure or degree of their jurisdiction :—

(1) Full powered States which enjoy and exercise plenary jurisdiction over all persons and in respect of all offences committed within their territories.

(2) States whose jurisdictional authority is restricted in respect of persons.

(3) States whose jurisdictional authority is restricted in respect of offences.

(4) States whose jurisdictional authority is restricted both in respect of persons and of offences.

(*c*) The general rule of law is that the territorial sovereignty of a State is exclusive and absolute and it is susceptible of no limitation not imposed by itself.

(*d*) Such powers alone as are surrendered by the Sovereign of the country can be exercised by the Sovereign of the Treaty Power (*i. e.*, the Sovereign to whom the grant has been made) ; all those powers which are not surrendered are retained.

(Piggot on Extra-territoriality).

The aforesaid principles have been judicially declared to be applicable to Indian States.

The Secretary
Chamber of Princes,
Council House, New Delhi.

Subject: Extra-territorial rights by the Government of India with respect to European and American subjects in Indian States and over Government servants.

Sir,

With reference to circular No.70 dated 10th July 1941 addressed to His Highness the Maharaja of Mysore by His Highness the Chancellor on the above subject, I am directed to state as follows:-

I (i) Jurisdiction over European British subjects. At present plenary criminal jurisdiction over European British subjects resident in the State of Mysore is vested in the Governor-General in Council and His Highness the Maharaja can exercise only such jurisdiction as may be delegated to him by the Governor-General in Council. The Criminal Courts in the State have no jurisdiction to enquire into or try a charge against a European British subject. The criminal charges against these persons (European British subjects) are enquired into and tried by the Justices of the Peace, who are themselves European British subjects appointed by the Governor-General in Council under the Foreign Jurisidiction Order in Council, 1902 and the procedure applicable to such enquiries and trials is the ~~pro-~~

procedure ~~k~~ under the Criminal Procedure Code for the time being in force in British India. If the offence is such that it ~~had~~ has to be committed to a Court of Sessions, Justices of the Peace have to ~~com~~ commit the case to the High Court of Madras. An appeal from the decision of ~~the~~ a Justice of the Peace in the State lies to the High Court of Madras. Justices of the Peace in Mysore are required to submit the calendar of all cases tried by them to the High Court of Madras. The Police Officers and Magistrates in Mysore can exercise with respect to European British subjects, only such powers as are being exercised by the Police Officers and Magistrates who are not Justices of the Peace, in places in British India outside the Presidency Towns.

(ii) Cases against Europeans and Americans.- The provisions under the Code of Criminal Procedure as in force in Mysore apply to non-British Foreigners (Non-British Europeans and Americans) Information regarding every case in which a charge is preferred against any European or American should however be furnished to the Hon'ble the Resident in Mysore with a view to determining the Court by which the case should be tried. ~~and with~~ A Report of the trial of all such cases shall also be furnished to him.

The Special First Class Magistrate of the

Kolar Gold Fields may try such cases without previous reference to the Hon ble the Resident in Mysore, the latter however reserving the right to himself to move the Government of Mysore for the transfer of any such case from the file of the Special First class Magistrate, K.G.F. to any other court if the circumstances appear to render such a step desirable.

(iii) Criminal Cases against Government servants.

From para 2 (1) of the letter under reference it is assumed that what is required is the procedure adopted in the State in respect of trial of Government servants of British India working within the State limits, such as officers of the Postal Department. The State Courts exercise jurisdiction over these officers unless they are European British subjects and the provisions under the Code of Criminal Procedure as in force in Mysore apply to them.

II. Article 16 of the Mysore Treaty, 1913 is reproduced below:-

Plenary criminal jurisdiction over European British subjects in the said territories shall continue to be vested in the Governor-General in Council, and the Maharaja of Mysore shall exercise only such jurisdiction in respect to European British subjects as may from time to time be delegated to him by the

Governor General in Council.

III. Amendment to Treaty of 1913. The original provisions of Article 16 of the Mysore Treaty have not been amended

IV. Improvement in the Judiciary in the State.- The judicial system that obtains in Mysore is ~~the same as~~ similar to that in British India. ~~and that the quality of the Administration of Justice in Mysore will stand comparison to that in the Provinces of British India.~~ There is separation of judicial from executive functions. Revenue divisional

V. Hardships caused as a result of the existing system relating to the trial of European British subjects.- It is not possible to furnish any information on this subject in detail. I is probable that some handship may reslt to the witnesses coming from long distances to the Headquarters of the Justices of the Peace, for depposing facts coming to their knowledge.

VI.- Government of Mysore are of opinion that the Magistrates in Mysore should be delegated with the same powers as are exercised by those in British India over European British subjects.

Many a time it so happens that the Europeans chosen as Justices of the Peace have no experiance or knowledge of law and are not acquainted with the procedure relating to the trial of criminal cases. Sometimes there will be failure of justice.

I have etc.

25/9/41

Law Secretary to Govt

The Secretary,
Chamber of Princes,
Council House, New Delhi

Subject: Extra-territorial rights by the Government of India with respect to European and American subjects in Indian States and over Government servants.

S i r,

With reference to circular No.70 dated 10th July 1941 addressed to His Highness the Maharaja of Mysore by His Highness the Chancellor on the above subject, I am directed to state as follows:-

I. (i) Jurisdiction over European British Subjects.- At present plenary criminal jurisdiction over European British subjects resident in the State of Mysore is vested in the Governor-General in Council and His Highness the Maharaja can exercise only such jurisdiction as may be delegated to him by the Governor-General in Council. The Criminal Courts in the State have no jurisdiction to enquire into or try a charge against a European British subject. The criminal charges against these persons (European British subjects) are enquired into and tried by the Justices of the Peace, who are themselves European British subjects appointed by the Governor-General in Council under the Foreign Jurisdiction Order in Council, 1902 and the procedure applicable to such enquiries and trials is the procedure under the Criminal Procedure Code for the time being in force in British India. If the offence is such that it has to be committed to a Court of Sessions, Justices of the Peace have to commit

commit the case to the High Court of Madras. An appeal from the decision of a Justice of the Peace in the State lies to the High Court of Madras. Justices of the Peace in Mysore are required to submit the calendar of all cases tried by them to the High Court of Madras. The Police Officers and Magistrates in Mysore can exercise with respect to European British subjects, only such powers as are being exercised by the Police Officers and Magistrates who are not Justices of the Peace in places in British India outside the Presidency Towns.

(ii)Cases against Europeans and Americans.- The provisions under the Code of Criminal Procedure as in force in Mysore apply to non-British Foreigners (Non-British Europeans and Americans). Information regarding every case in which a charge is preferred against any European or American should however be furnished to the Hon'ble the Resident in Mysore with a view to determining the Court by which the case should be tried. A Report of the trial of all such cases should also be furnished to him. The Special First Class Magistrate of the Kolar Gold Fields may, however, try such cases without previous reference to the Hon'ble the Resident in Mysore, the latter however reserving the right to himself to move the Government of Mysore for the transfer of any such case from the file of the Special First Class Magistrate, Kolar Gold Field to any other Court if the circumstances appear to render such a step desirable.

(iii) Criminal Cases against Government servants.- From para 2 (1) of the letter under reference it is assumed that what is required is the procedure adopted in the State in respect of trials of Government servants of British India working within the State limits, such as officers of the Postal Department etc. The State Courts exercise jurisdiction over these officers unless they are European British subjects and the provisions under the Code of Criminal Procedure as in force in Mysore apply to them.

II. Treaty with regard to extra-territorial rights exercised by the Government of India.- Article 16 of the Mysore Treaty, 1913 is reproduced below:-

Plenary criminal jurisdiction over European British subjects in the said territories shall continue to be vested in the Governor-General in Council, and the Maharaja of Mysore shall exercise only such jurisdiction in respect to European British subjects as may from time to time be delegated to him by the Governor-General in Council.

III. Amendment to Treaty of 1913. The original provisions of Article 16 of the Mysore Treaty have not been amended.

IV. Improvement in the Judiciary in the State.- The judicial system that obtains in Mysore is similar to that in British India. There is separation of Judicial from executive functions. Revenue Divisional Officers do not try criminal offences.

V. Hardships caused as a result of the existing system relating to the trial of European British subjects.- It is not possible to furnish any information on this subject in detail.

VI. Government of Mysore are of opinion that the Magistrates in Mysore should be delegated with the same powers as are exercised by those in British India over European British subjects.